

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of A.H.,)	
Petitioner)	
And)	CAUSE NO. 051116-43
The Indiana High School Athletic Assoc., Inc.)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

This is an unusual matter in that it involves two high schools within the same public school district, the School City of Hammond (hereafter, “Hammond”). A.H. (hereafter, “Petitioner”) is a seventeen-year-old junior who presently attends Morton High School (hereafter, “Morton”), a public high school located in the Hammond school district. At all times relevant, Petitioner’s parents have resided within the attendance area of Hammond. Prior to attending Morton, Petitioner attended Gavit High School, a public school also located in the Hammond school district where she participated in volleyball and softball during 9th grade (2003-2004 school year) and volleyball, basketball and softball during 10th grade (2004-2005 school year).

On or about August 23, 2005, Petitioner, through her mother, requested a determination of her eligibility to participate in athletics during the 2005-2006 school year. Petitioner requested that she be granted full eligibility based on **Rule C-19-6.1f.**¹ **Rule C-19-6** is the Transfer Eligibility Without Change of Residence by Parent(s)/Guardian(s) rule. On or about August 30, 2005, Respondent, by its Commissioner, found that Petitioner was ineligible for athletics at Morton for 365 days in accordance with **Rule C-19-4** of the IHSAA By-Laws.²

¹ Respondent has promulgated a series of by-laws as part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are “common” to all potential athletics and, hence, begin with “C.” **Rule C-19-6.1** states, in part, as follows: A student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) may be declared immediately eligible provided there has been provided to the Association reliable, credible and probative evidence that one or more of the following criteria has been met.... f. The student transferred pursuant to a school board mandate for redistricting. (All references are to the 2005-2006 by-laws of Respondent.)

²**Rule C-19-4 TRANSFERS FOR PRIMARILY ATHLETIC REASONS** states as follows: To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from

Petitioner, through her mother, requested a review of the IHSAA Commissioner's decision by Respondent's Review Committee. This request was made on August 31, 2005. The Respondent's Review Committee conducted its review on October 7, 2005. The Review Committee issued its decision on October 17, 2005. The Review Committee upheld the decision of the IHSAA Commissioner, which determined that Petitioner was ineligible at Morton High School until 365 days from the date of her enrollment at Morton High School, when she may have full eligibility, provided she meets all other applicable IHSAA eligibility rules. The Review Committee found that: there was no evidence to qualify her for full eligibility under **Rule C-19-6.1**; Petitioner cannot obtain full eligibility under **Rule C-17-8.1** and **Rule C-17-8.5**;³ and there was evidence that the transfer from Gavit to Morton was primarily for athletic reasons in violation of **Rule C-19-4**.

the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons.

³The Hardship Rule provides, in pertinent part:

C-17-8.1 General

Except with respect to Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

* * *

C-17-8.4 General Consideration

- a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.
- b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.
- c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.

C-17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6 [Transfer Eligibility Without Change of Residence], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s), (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is no athletic related motives surrounding the transfer.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel⁴ on November 16, 2005. The parties were notified by memorandum of November 17, 2005, of their respective hearing rights. The parent was provided with a “Consent to Disclose Student Information” form. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. Hearing was set for December 9, 2005, at Room 233, State House, 200 West Washington Street, Indianapolis, Indiana. The parties received timely notice of the proceedings. On December 9, 2005, due to inclement weather, an Order Vacating Hearing was issued by the Chair of the Case Review Panel which also indicated that a notice of a new hearing date would be sent to both parties. Hearing was set for December 19, 2005, at James Whitcomb Riley Conference Room, Indiana Department of Education, 151 West Ohio Street, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On December 19, 2005, the CRP convened.⁵ The Petitioner was present in person and by her parent. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted during which the Petitioner submitted twelve additional exhibits. The Respondent objected to Exhibits P-5, P-6, P-7 and P-8 as being hearsay. The exhibits were admitted over the objection, although the Petitioner was advised to provide further identification or authentication as to Exhibits P-5 through P-7.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is a 17-year-old junior (d/o/b October 28, 1988) enrolled in 11th grade at Morton High School within the School City of Hammond school district for the 2005-2006 school year. She attended Gavit High School, also within the School City of Hammond, for her freshman (2003-2004) year and sophomore (2004-2005) year.
2. At all times relevant, Petitioner’s parents have resided within the attendance area of the School City of Hammond school district.

⁴The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

⁵Five members were present: Joan L. Keller, Chair; Scott F. Eales; Melissa B. Starry; Terry Thompson; and Brad Tucker.

3. On the IHSAA Athletic Transfer Report, Petitioner⁶ and Morton (receiving school) indicated that she would be eligible according to **Rule C-19-6.1f**. The “Student is transferring pursuant to school board mandate for redistricting” box was checked, but hardship under **Rule C-17-8** was not sought. Petitioner and Morton also indicated that the reason for the transfer was small class size, better environment, and better ISTEP scores.
4. On the IHSAA Athletic Transfer Report, Gavit (sending school) indicated that an investigation should be made regarding reasons stated by family in the transfer including what is meant by “better environment.” Gavit submitted statistics on ISTEP+/GQE comparisons between Morton and Gavit high schools for 2004. The sending school claimed that: the student withdrew for athletic reasons, and several conflicts with basketball and softball coaches; and there was conflict with philosophy of coaches relative to athletics. Gavit answered “yes” to the question regarding whether the transfer was for athletic reasons, and recommended the student should be declared ineligible according to **Rule C-19.4**. Gavit’s Principal did not sign the Hardship Verification.
5. Hammond’s Superintendent submitted a letter to Mr. Blake Ress, Commissioner, IHSAA, dated August 25, 2005, which indicated his support for the transfer between Hammond’s schools for A.H. This letter indicated that in the spring of 2005, the Hammond School Board made an adjustment in the boundary line between Gavit and Morton high schools as well as encouraged other students to request transfers from Gavit to Morton to help with the overcrowding at Gavit High School. Hammond’s Superintendent claimed that A.H. requested a transfer to Morton pursuant to Hammond’s School Board policy, though she did not reside in the boundary change area. The Superintendent’s letter also indicated that Petitioner stated that her intent is not to pursue a better athletic opportunity but to relieve the stressful situation that occurred between Gavit’s coaches and A.H.
6. In an undated letter, the IHSAA Commissioner, Blake Ress, ruled that the transfer was an athletically motivated transfer, and added that the transfer appears to be as blatantly athletic as any transfer the office had dealt with in recent years. The IHSAA Commissioner’s ruling meant that the student was athletically ineligible at Morton for 365 days from her enrollment at Morton under the IHSAA’s Rule C-19-4.
7. A.H. is a three sport athlete. As a freshman she played volleyball and softball. As a sophomore she played basketball, softball and volleyball.
8. A.H.’s parents questioned the coaching philosophy of the basketball coach and had conflicts with both the Gavit basketball and softball coaches.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The

⁶Signed by the mother of the Petitioner and dated 8/4/05.

Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner has presented no evidence to qualify her for full eligibility under **Rule C-19-6.1**.
4. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared to have limited eligibility⁷ pursuant to **Rule C-19-6.2** unless the transfer was primarily for athletic reasons⁸ (in which case the student would be ineligible for 365 days), or unless there exist circumstances showing an undue hardship would result from enforcement of the Rule.
5. In submitting the IHSAA Athletic Transfer Report, Petitioner did not seek a hardship transfer pursuant to **Rule 17-8.1**, nor did either school sign the hardship verification pursuant to **Rule 17-8.5**. The evidence does not support a conclusion that application of the transfer rules would be an undue hardship for Petitioner.
6. There was evidence to show that the transfer from Gavit to Morton was primarily for athletic reasons in violation of **Rule 19-4**.

⁷Respondent's by-laws provide the following definition: **Limited Eligibility** - A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.

⁸Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

ORDER

1. The Respondent's determination that Petitioner is ineligible for interscholastic competition during the 2005-2006 school year, pursuant to **Rule C-19-4**, is upheld. This was determined by a vote of 5 - 0 on the fifth vote.

DATE: January 9, 2006

/s/ Joan L. Keller, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.